

Before the  
Federal Communications Commission  
Washington, D.C. 20554

JAN 16 9 20 AM '04

D.L.

In the Matter of )  
 )  
Amendment of Section 73.202(b), ) MM Docket No. 00-102  
Table of Allotments, ) RM-9888  
FM Broadcast Stations. )  
(Charlotte Amalie, Frederiksted, and )  
Christiansted, Virgin Islands) )

**REPORT AND ORDER**  
**(Proceeding Terminated)**

**Adopted: December 31, 2003****Released: January 16, 2004**

By the Assistant Chief, Audio Division:

1. At the joint request of Ocean FM Media and Island Prime Media ("Petitioners"), the Audio Division has before it a *Notice of Proposed Rule Making and Order to Show Cause*<sup>1</sup> proposing (a) the allotment of Channel 257A at Charlotte Amalie, Virgin Islands; and (b) the allotment of Channel 258A at Frederiksted, Virgin Islands. To accommodate the allotments, petitioners also request the substitution of Channel 293B for Channel 258B at Christiansted, Virgin Islands, and the modification of Station WVIQ-FM's license accordingly. Petitioners filed comments in support of the proposal reaffirming their intention to apply for the respective channels, if allotted. Comments and a counterproposal were jointly filed by Aurio A. Matos and Juan Carlos Matos ("Matos") proposing the substitution of Channel 254B1 for Channel 254A at Culebra, Puerto Rico. To accommodate the upgrade, Matos also requested (a) the substitution of Channel 248A for proposed Channel 258A at Frederiksted, Virgin Islands; (b) the substitution of Channel 258B1 for proposed Channel 257A at Charlotte Amalie, Virgin Islands; and (c) the substitution of Channel 253B for Channel 254B at Mayaguez, Puerto Rico.<sup>2</sup> JKC Communications of the Virgin Islands, Inc. ("JKC"), licensee of Station WVIQ-FM, Christiansted, Virgin Islands, filed comments in response to the *Order to Show*. Joseph Bahr filed comments in support of the Frederiksted allotment stating his intention to apply for the channel. Island Prime Media filed a Motion to Strike and Arso Radio Corporation ("Arso") filed an Opposition. Reply Comments were filed by Arso, Matos, and jointly filed by Prime Media and Jose J. Arzuaga

<sup>1</sup> *Charlotte Amalie, et al., Virgin Islands*, 15 FCC Rcd 9468 (MMB 2000).

<sup>2</sup> The Culebra, Puerto Rico counterproposal filed by Matos is technically defective and was not placed on Public Notice. Specifically, to accommodate the Culebra allotment, the requested substitution of Channel 248A for proposed Channel 258A at Frederiksted, at coordinates 17-42-48 NL and 64-53-00 WL, would be short-spaced to the allotment of Channel 247C in the British Virgin Islands. Since the short-spacing cannot be cured with a site restriction, it renders the entire counterproposal unacceptable. Therefore, all pleadings filed in support of, or in opposition to, the counterproposal are moot and will not be discussed in this proceeding.

2. In its response to the *Order to Show Cause*, JKC advises that in regard to changing its frequency to accommodate the instant proposal that (a) in the event the benefiting party fails to timely state its willingness to reimburse JKC for reasonable costs associated with Station WVIQ's frequency change, that the Commission promptly dismiss the instant proposal; (b) that the Commission clearly articulate, both in its order terminating this proceeding and in public notices relating to the future FCC auction for Channel 257A at Charlotte Amalie and Channel 258A at Frederiksted, Virgin Islands, that the ultimate permittees be required to reimburse JKC for costs incurred in changing its frequency;<sup>3</sup> (c) that in the best interest of all concerned that all auction bidders be given notice of the estimated cost (\$97,615 (not including taxes or freight)) that would incur in connection with the frequency change; and (d) that future permittees of the Channels 257A and 258A at Charlotte Amalie and Frederiksted, respectively, be required to place an amount equal to JKC's cost estimates (as revised in the future) in escrow prior to the frequency change; and (e) that auction bidders for these channels be put on notice of the escrow requirements so that JKC will be properly reimbursed for the frequency change.

3. In regard to the issue raised by JKC concerning reimbursement, in their comments, petitioners have stated their willingness to reimburse JKC should they become ultimate permittees of Channel 257A at Charlotte Amalie and Channel 258A at Frederiksted. Based upon the record in this proceeding as well as our experience regarding reimbursement, we will not require bidders for these allotments to place monies in escrow. Moreover, it is Commission policy that the proper amounts of reimbursement for the reasonable cost of changing frequency must be subject of negotiation between the ultimate permittee and the licensee of Station WVIQ-FM according to the guidelines set forth in *Circleville, infra*. Once a construction permit has been granted, we expect parties to negotiate in good faith, subject to Commission review in the event of a disagreement.<sup>4</sup> Finally, we note that Station WVIQ-FM need not take steps to change frequency until it is assured that it will receive payment.<sup>5</sup>

4. We believe the public interest would be served by allotting Channel 257A at Charlotte Amalie, as the community's ninth local FM transmission service.<sup>6</sup> Additionally, we are allotting Channel 258A at Frederiksted, Virgin Island, as the community's fourth local FM transmission service. To accommodate the allotments, we are also substituting Channel 293B for Channel 258B at Christiansted, Virgin Islands, and modify Station WVIQ-FM's license accordingly. An engineering analysis has determined that Channel 257A can be allotted to Charlotte Amalie in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.2 kilometers (2.6 miles) west to avoid a short-spacing to the allotment site for Channel 258A at Frederiksted, Virgin Islands<sup>7</sup>; and Channel 258A can be allotted to Frederiksted in compliance with the Commission's minimum distance separation requirements at city

<sup>3</sup> *Citing Circleville, Ohio*, 8 FCC2d 159, 163 (1967)

<sup>4</sup> *See Mayfield and Wickliff, Kentucky*, 48 RR2d 1232 (1981).

<sup>5</sup> *See Churchville and Luray, Virginia*, 5 FCC Rcd 1106 (1990), *recon. denied*, 6 FCC Rcd 1313 (1991).

<sup>6</sup> Channels \*226A and \*275A are reserved for non-commercial educational use.

<sup>7</sup> The coordinates for Channel 257A at Charlotte Amalie are 18-21-25 North Latitude and 64-58-00 West Longitude.

reference coordinates.<sup>8</sup> To accommodate the allotments, Channel 293B can be substituted at Christiansted in compliance with the Commission's minimum distance separation requirements at Station WVIQ-FM's presently licensed site.<sup>9</sup>

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective March 1, 2004, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below to read as follows:

<u>City</u>	<u>Channel No.</u>
Charlotte Amalie, Virgin Islands	*226A, 241B1, 250B, 257A, 271B, *275A, 282B, 287B 297A
Frederiksted, Virgin Islands	252A, 258A, 269B1, 278A
Christiansted, Virgin Islands	228B1, 237B, <sup>10</sup> 262B, 285A 293B

6. A filing window for Channel 257A at Charlotte Amalie, Virgin Islands, and Channel 258A at Frederiksted, Virgin Islands, will not be opened at this time. Instead, the issue of opening these allotments for auction will be addressed by the Commission in a subsequent Order. Since these allotments require the substitution of Channel 293B for Channel 258B at Christiansted, Virgin Islands, any requisite conditions for the channel change will be stipulated in said Order.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

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<sup>8</sup> The coordinates for Channel 258A at Frederiksted are 17-42-48 North Latitude and 64-53-00 West Longitude.

<sup>9</sup> The coordinates for Channel 293B at Christiansted are 17-44-07 North Latitude and 64-40-46 West Longitude.

<sup>10</sup> On March 12, 2003, Radio 95, Incorporated, licensee of Station WJKC(FM), was granted a construction permit for Channel 237B in lieu of Channel 236B at Christiansted, Virgin Islands.

8. For further information concerning this proceeding, contact Sharon P. McDonald, Media Bureau, (202) 418-2180.

**FEDERAL COMMUNICATIONS COMMISSION**

**John A. Karousos  
Assistant Chief, Audio Division  
Media Bureau**